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IN THE COURT OF APPEALS OF INDIANA

CHAD R. SADLER,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 19A01-0612-CR-547
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE DUBOIS CIRCUIT COURT
The Honorable William E. Weikert, Judge
Cause No. 19C01-0509-FA-229

August 24, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

Case Summary

Chad Sadler appeals his convictions and sentence for class A and class C felony child molesting. We affirm.

Issues

We restate the issues as follows:

I. Whether the trial court abused its discretion in finding M.S., the eight-year-old victim, competent to testify at Sadler's jury trial; and

II. Whether Sadler's sentence is appropriate in light of the nature of the offenses and his character.

Facts and Procedural History[1]

Between September 2004 and March 2005, M.S., then age six, was home alone with her father, Sadler, in Dubois County, while her mother was at work. M.S. went into her father's room, woke him up, and asked him to make her breakfast. Instead, Sadler told her to come toward the bed. M.S. got into the bed. Sadler grabbed her legs, took off her underwear, and "started doing it." Tr. at 70. Sadler put his private into M.S.'s private and started moving it around, and then white stuff came out. *Id.* at 72. Sadler went into the restroom and wiped the white stuff off M.S.'s private place between her legs. *Id.* at 73. Sadler told M.S. not to tell anyone about what happened because if she told, she would be put into foster care. *Id.* at 81.

[1] We note that Sadler's counsel included Sadler's pre-sentence report in the appellant's appendix. Indiana Administrative Rule 9(G)(1) states that the information therein "is excluded from public access and is confidential." Indiana Trial Rule 5(G)(1) requires that such documents be separately identified and "tendered on light green paper or have a light green coversheet attached to the document, marked 'Not for Public Access' or 'Confidential.'"

M.S. told someone at school about the incident. On September 1, 2005, the incident was reported to the Department of Family and Children ("DFC"). The case manager talked with M.S., who told her that Sadler had sexually abused her. At that point, DFC determined that M.S. was not safe in the home and reported the incident to the Jasper City Police Department. The case manager and a police officer went to the Sadlers' residence to inform them of the situation and to remove the other child from the home.

Sadler and his wife, M.S.'s mother, voluntarily went to the police station. Sadler admitted that he had sexual dreams about M.S. and stated, "I may have done something wrong, but I don't remember." *Id*. at 325. Sadler also stated that he woke up one morning with his hand on M.S.'s breast and that he awakened on another occasion and M.S. was fondling his penis.

The State charged Sadler with class A child molesting and two counts of class C felony child molesting. On April 12, 2006, the trial court held a competency hearing based on Sadler's objection to M.S.'s competency. The prosecutor asked M.S. several questions, including whether she knew the difference between a truth and a lie. M.S. responded affirmatively. M.S. told the prosecutor that when she lied at home, she had to stand in the corner. *Id*. at 4. The trial court determined that M.S. "sufficiently understands the nature of an oath, and is competent to testify as a witness." Appellant's App. at 58.

A jury trial was held on October 4, 2006. At trial, Sadler again objected to M.S.'s testimony on competency grounds. Over Sadler's objection, M.S. demonstrated that she knew the difference between a truth and a lie, that she knew what a true statement was, and that she was obligated to tell the truth. Tr. at 60-61. The officer who interviewed Sadler

testified that Sadler admitted to waking up with his hand on M.S.'s breast and that he dreamed about having sex with M.S. Sadler took the stand and testified that he did not sexually abuse M.S., but he did have sexual dreams about her. The jury found Sadler guilty of class A felony child molesting and one count of class C felony child molesting. The trial court sentenced Sadler to concurrent terms of thirty years' incarceration on the class A felony and four years' incarceration on the class C felony. Sadler now appeals.

Discussion and Decision

I. Competency of M.S.

Sadler concedes that M.S.'s testimony is sufficient to support his class A felony conviction. *See Bowles v. State*, 737 N.E.2d 1151, 1152 (Ind. 2000) ("A victim's testimony, even if uncorroborated, is ordinarily sufficient to sustain a conviction for child molesting."). Sadler asserts, however, that M.S. was not competent to testify at trial. "Every person is competent to be a witness except as otherwise provided in these rules or by act of the Indiana General Assembly." Ind. Evidence Rule 601.

> When competency to testify is placed in issue, it is the trial court's duty to schedule a hearing to determine whether the witness is in fact competent to testify. The test used to determine the competency of a witness is to determine whether the witness has sufficient mental capacity to perceive, to remember, to narrate the incident he has observed, and to understand and appreciate the nature and obligation of the oath.

Flynn v. State, 702 N.E.2d 741, 746 (Ind. Ct. App. 1998) (citations and quotation marks omitted), *trans. denied* (1999). "The trial court has the discretion to determine if a child witness is competent based on the court's observation of the child's demeanor and responses to questions posed by counsel and the court." *Richard v. State*, 820 N.E.2d 749, 754 (Ind. Ct.

App. 2005), *trans. denied*. A child's competency to testify at trial is established by demonstrating that she understands the difference between a truth and a lie, knows she has an obligation to tell the truth, and knows what a true statement is. *Id*. at 755.

Sadler's lengthy argument is difficult to discern. He appears to concede that M.S. knew the difference between a truth and a lie at the time of the April 2006 competency hearing and at the October 2006 trial but asserts that she did not at the time of her February 2006 deposition. Sadler's claim boils down to his bald assertion that "M.S. was rehabilitated through talks with her therapist and her foster parent." Appellant's Br. at 10.[2] We decline to engage in such unsupported speculation. As such, we affirm the trial court's determination that M.S. was competent to testify.

II. Appropriateness of Sentence

The trial court imposed concurrent advisory[3] sentences for Sadler's class A and class C felony child molesting convictions. Sadler challenges the appropriateness of his thirty-year aggregate sentence. This Court "may revise a sentence authorized by statute if, after due consideration of the trial court's decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender." Ind. Appellate Rule

[2] To the extent Sadler suggests that the State asked M.S. improper leading questions at the competency hearing, we note that M.S. did not verbalize her answers and that the State merely noted her nonverbal responses for the record.

[3] Sadler committed the crimes when the presumptive sentencing scheme was in effect and was sentenced pursuant to the advisory scheme that became effective on April 25, 2005. We note, however, that "courts generally must sentence defendants under the statute in effect at the time the defendant committed the offense." *White v. State*, 849 N.E.2d 735, 741 (Ind. Ct. App. 2006), *trans. denied*. Because Sadler asks us to review his sentence pursuant to Appellate Rule 7(B), which was unaffected by the sentencing amendments, we need not explore this matter further.

7(B). Our supreme court has stated that "a defendant must persuade the appellate court that his or her sentence has met this appropriateness standard of review." *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006). Sadler has failed to meet his burden here.

We are troubled, to say the least, by the nature of Sadler's offenses. When Sadler's six-year-old daughter asked her father to make breakfast on Saturday morning, he enticed her into bed, engaged in sexual intercourse, and threatened to put her in foster care if she told anyone. Sadler admitted to having sexual dreams about his daughter and to fondling her breast. These acts speak volumes about Sadler's depraved character.[4] After due consideration of the trial court's decision, we find that Sadler's thirty-year sentence is entirely appropriate.

Affirmed.

BAKER, C. J., and FRIEDLANDER, J., concur.

[4] Sadler was also convicted of battering his sister in 1997. The trial court found that Sadler had lived a law-abiding life since that time and considered this to be an "important" mitigating circumstance. Tr. at 413. Nevertheless, Sadler now has a well-documented history of physical and sexual violence against female family members.